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December 11, 2020

VIA ECF AND OVERNIGHT DELIVERY

The Honorable Cecelia G. Morris, Chief Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 627
New York, NY 10004-1408

Re: Picard v. Fairfield Greenwich Group (in re Fairfield Sentry Ltd.), Adv. Pro. No. 10-03800 (CGM) (“Assigned Claims Action”)
Picard v. Fairfield Sentry Ltd., Adv. Pro. No. 09-01239 (CGM)

Dear Chief Judge Morris:

We are counsel to Irving H. Picard, Trustee, the plaintiff in the above-referenced actions. This will follow up on my letter to the Court dated November 25, 2020 [ECF No. 143], which stated that the parties would advise the Court no later than December 11, 2020, of the parties’ efforts to reach agreement on which law applies to certain claims in the Proposed Second Amended Complaint in the Assigned Claims Action (“PSAC”) [ECF No. 90-1], and whether any of those claims will require the Court to conduct a conflict of law analysis.

The parties have conferred and report that to date we have agreed that New York law governs the First Claim in the PSAC, and Bermuda law governs the Second and Third Claims in the PSAC. The parties also agree that New York and Bermuda law are the same with respect to the meaning of “willful misfeasance,” “bad faith,” “gross negligence,” and “reckless disregard” in the exculpatory clauses in the contracts that are at issue in the Second and Third Claims in the PSAC, and thus as to the meaning of those terms, New York law applies.

The parties wish to continue discussing the choice of law governing the Fourth and Fifth Claims in the PSAC and, with the Court’s permission, will definitively report the parties’ positions as to the choice of law for these remaining PSAC claims by December 18, 2020.

The Honorable Cecelia G. Morris, Chief Judge

December 11, 2020

Page 2

The consideration of the Court is greatly appreciated.

Respectfully submitted,

/s/ Geraldine E. Ponto

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